

Government of the District of Columbia  
Office of the Chief Financial Officer



**Jeff DeWitt**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeff DeWitt  
Chief Financial Officer

**DATE:** November 12, 2014

**SUBJECT:** Fiscal Impact Statement – Civil Asset Forfeiture Amendment Act of 2014

**REFERENCE:** Bill 20-48, Draft Committee Print as shared with the Office of Revenue Analysis on November 10, 2014

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**Conclusion**

Funds are sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

The bill could reduce federal resources received by the District by approximately \$670,000 each year beginning FY 2019.

**Background**

The bill establishes, amends, and codifies procedures for civil asset forfeiture in the District. First, the bill establishes the general conditions under which property<sup>1</sup> can be seized. Property is not forfeitable unless the owner is willfully blind that the property is being used in an illegal action and the forfeiture must be proportionate to the seriousness of the forfeitable offense. Superior Court must consider the importance of the property to the offense, the value of the property to the owner, and the likelihood that property would be used to commit a similar illegal activity. The bill also ensures that items contained within forfeitable property (such as personal property contained in a vehicle) are not automatically forfeitable unless they would be forfeitable on their own.

Second, the bill directs how seized property should be handled and the notice requirements associated with seizing property. The Mayor must maintain possession of seized property and must properly inventory,<sup>2</sup> store, and dispose of perishable items. If an item is disposed of, the value

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<sup>1</sup> The types of property are real property, personal property, vehicles, and currency.

<sup>2</sup> Each piece of property must receive an individual property control number.

received must be kept safe.<sup>3</sup> Once seized,<sup>4</sup> the Mayor has ten business days<sup>5</sup> to provide written notice<sup>6</sup> to the property owner describing what property is being held, whether or not the District will pursue civil forfeiture, and the process and form by which the owner can contest forfeiture and seek interim release of the property. If timely notice is not provided, the Mayor must return the property or establish a case for why the delay was necessary. Failure to provide timely notice does not preclude the Mayor from pursuing the civil forfeiture case, but that the Mayor can no longer maintain possession of the property pending the case's outcome.

Third, the bill establishes procedures for interim release of property to its owner. The property owner can contest the forfeiture, and request interim release of the property within ninety days of receipt of the seizure notice.<sup>7</sup> Upon a request for interim release, the Mayor can release the property, negotiate conditions of the release with the owner,<sup>8</sup> or challenge the release request. To challenge the interim release request, the District has five days to request a post-seizure hearing at DC Superior Court in which the District can present its case to maintain possession of the property. For seizures of currency or vehicles, the hearing must be held within five business days of receiving a request for an interim release hearing. For all other property seizures, the hearing must be held within ten business days. The burden of proof is on the District to prove, by a preponderance of the evidence that real property, vehicles, and currency of \$1,000 or less and by probable cause for all other property that the property is subject to forfeiture. Superior Court will render a decision that the District can maintain possession of the property or must release it back to the owner<sup>9</sup> – with or without conditions as needed to protect the interests of the District.

Fourth, the bill establishes the procedures for the forfeiture proceedings following a property owner's request to challenge the forfeiture. This includes the requirement for the District to file a libel of information in Superior Court within sixty or ninety days<sup>10</sup> of a property owner's notification that he or she will contest the forfeiture, otherwise, the District will be barred from pursuing forfeiture. Additionally, the bill changes the burden of proof as to whether property is forfeitable from the property owner to the District and establishes the standards of proof in the following chart:

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<sup>3</sup> The value of the forfeiture decision is based on the original item and not the proceeds from the item's disposition.

<sup>4</sup> Real property may not be seized until after the owner receives a pre-seizure hearing at the Superior Court unless the District allows the owner to retain possession under prescribed conditions.

<sup>5</sup> Notice must be provided in five business days if an evidentiary hold is lifted and the prosecutorial authority is going to charge the case.

<sup>6</sup> This must be done in person or by certified mail and the owner must acknowledge receipt or a representative of the District must document that the owner refused to sign the notice.

<sup>7</sup> If the form is not returned in ninety days, the Mayor can make the determination as to whether or not the property is forfeitable and take the appropriate next steps to dispose of or return it.

<sup>8</sup> The bill restricts the conditions the Mayor can agree upon with a property owner for interim release to restrictions on who can use the property; in the case of a vehicle, proof of ownership, an agreement that the property will not be damaged or disposed of, and an agreement that registrations and insurance will be up-to-date; or a 2.5 percent bond in the case of all other property.

<sup>9</sup> If the District didn't meet the notice requirements or is unable to show that the property was reasonably subject to forfeiture, the District's request should be denied.

<sup>10</sup> If the District has custody of the property, it has sixty days to file and if the owner has custody, the District has ninety days to file. Additionally, for real property, the District has ten days following the filing of the libel of information to file a notice of proceeding with the Recorder of Deeds.

Action	Standard of Proof
To be successful in a vehicle or real property <sup>a</sup> forfeiture case	Clear and convincing evidence
To be successful in all other property cases	Preponderance of the evidence
To overcome the presumption that \$1,000 in currency or less is unrelated to the forfeitable offense	Clear and convincing evidence
To overcome the presumption that interest acquired in property following the forfeitable offense is not subject to forfeiture	Clear and convincing evidence
Application of an affirmative defense <sup>b</sup>	Preponderance of the evidence

Table Notes

<sup>a</sup> Real property forfeiture can only be pursued upon conviction of the forfeitable offense.

<sup>b</sup> Affirmative defenses include taking reasonable action to stop the commission of the offense, failing to stop the commission of the offense due to safety concerns, or that the forfeiture is disproportionate to the forfeiture offense. This burden is on the property owner.

Fifth, the bill outlines the rights of the property owner following a civil forfeiture hearing, which determines that the property must be returned to the owner. The owner must acknowledge receipt of the property back from the District, but only after the property has been viewed and inspected, and must receive written notice of the procedures to file a loss or damage claim. A loss or damage claim can be filed within six months<sup>11</sup> of the returning of the property if the loss or damage was intentional or caused by gross negligence<sup>12</sup> of the District or its employees. However, the District cannot be held liable for damage to property as a result of wear and tear, decay, corrosion, acts of a third party, or a *force majeure*. Even if the civil proceeding results in forfeiture, the bill provides an avenue for the owner to seek remission or mitigation.<sup>13</sup>

Sixth, the bill requires that any proceeds from a District civil forfeiture case be deposited into the District's General Fund. Additionally, beginning on October 1, 2018, the District shall deposit any proceeds from federal or multiple-jurisdiction forfeitures into the General Fund. The bill also bans the District from participating in adoptive seizures. Adoptive seizures are those where the District performs all the investigative efforts and hands the property over to a federal agency solely for purposes of prosecuting the civil forfeiture case.<sup>14</sup> The bill imposes a number of reporting requirements on the Metropolitan Police Department and the Office of the Attorney General.

Lastly, the bill includes a number of explanations and conforming amendments to clarify what types of property are subject to forfeiture as it relates to various criminal activities.

### Financial Plan Impact

Funds are sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

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<sup>11</sup> D.C. Official Code § 12-309.

<sup>12</sup> As defined in D.C. Official Code § 5-119.11.

<sup>13</sup> This is a process by which the Mayor can exercise his or her executive authority to return all or some of the value of the forfeited property.

<sup>14</sup> This does not stop a federal entity from adopting the seizure if there is a basis for federal forfeiture.

There are three main fiscal concerns associated with the bill's implementation. First, the bill will impact the operations at the Metropolitan Police Department (MPD). Second, interim release requests proposed by the bill will increase caseloads for the Office of the Attorney General (OAG). Third, the bill will divert federal resources from MPD to the District's General Fund, and this is not permissible under current Federal rules.

MPD will be required to provide safe storage for seized property, provide notice either in-person or via certified mail, and properly return or dispose of any property that is perishable, illegal, harmful, or forfeited. First, MPD currently catalogues and provides storage for seized property and can absorb any costs associated with these provisions.<sup>15</sup> Second, MPD expects it can provide notice in-person in most cases within the ten-day requirement. MPD can absorb any administrative costs associated with creating the required notice forms. Third, MPD can absorb any costs associated with the proper disposal of property and any forms associated with the return of property to its owner following a failed forfeiture pursuit.

OAG already pursues all forfeiture cases and considers interim release requests for vehicles, but does not challenge interim release requests at the Superior Court. This would be a new process for the agency. Current interim release statistics for vehicles suggest that OAG could see one to two vehicle interim release cases each week. At present, no process exists for currency interim release request, and these constitute the bulk of forfeiture cases.<sup>16</sup> The Office of Revenue Analysis estimates that OAG could contest<sup>17</sup> six interim release cases each week.<sup>18</sup> OAG can absorb this additional casework with its existing resources, but if interim release requests are more frequent than anticipated or result in more hearings than anticipated, it would put significant pressure on OAG's resources and that should be monitored.

Lastly, the bill requires any proceeds from forfeiture, whether pursued by the District or transferred from a federal agency, be deposited into the General Fund. Proceeds from District forfeitures are about \$30,000 per year and are already directed to the General Fund. An additional \$670,000 is received from federal agencies as part of the Federal Equitable Sharing Program ("Equitable Sharing").<sup>19</sup> Equitable Sharing requires that funds received through the program must be used for law enforcement purposes only. Accordingly, these amounts are now set aside in a special purpose fund, and fund monetary rewards, witness protection program or confidential informants. Beginning on October 1, 2018, directing these funds to the General Fund will result in the loss of \$670,000 in annual revenues because the District will be in violation of the federal requirements. Loss of these funds will effectively eliminate the programs since the District provides minimal funding for confidential programs and awards. However, because this provision is effective beginning FY 2019, the annual \$670,000 cost is not included in the fiscal impact analysis.

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<sup>15</sup> Safe storage of vehicles is a risk that should be monitored because the impound lot where MPD stores them is in need of significant upgrades to ensure the security of property on the lot. However, the bill's exemption from liability for wear and tear, decay, corrosion, acts of a third party, and *force majeure* provides enough protection against the risks associated with the lot's condition so that upgrades are not required at this time.

<sup>16</sup> From January through September 2014, 90 percent of forfeiture cases were currency related.

<sup>17</sup> OAG could grant interim release without an interim release hearing at Superior Court.

<sup>18</sup> This conservatively assumes that 100 percent of all currency cases over \$500 result in an interim release hearing at Superior Court.

<sup>19</sup> Equitable Sharing requires that the proceeds be dedicated to law enforcement efforts.